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Attorneys for Defendants Sam S. Russo and
Sam S. Russo, Inc. d/b/a Suzie Q. Farm

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

SAM S. RUSSO, individually, SAM S.
RUSSO, INC., and SUZIE Q. RUSSO, LLC,
d/b/a/ SUZIE Q. FARM,

Defendants.

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY--LAW DIVISION

DOCKET NO. OCN-001974-19

CIVIL ACTION

**SECOND SUPPLEMENTAL
CERTIFICATION OF SAM RUSSO**

SAM RUSSO, being of full age, hereby certifies as follows:

1. I make this Second Supplemental Certification in further support of the opposition of Defendants Sam S. Russo d/b/a Suzie Q. Farm to the Order Show Cause and Verified Complaint filed by the New Jersey Department of Environmental Protection ("NJDEP"). While NJDEP named Suzie Q. Russo, LLC and Sam S. Russo, Inc. as defendants there are no such entities in existence.

2. I am fully familiar with the facts set forth herein and I submit this Second Supplemental Certification to respond to the claims set forth in NJDEP's submission dated October 17, 2019.

Soil Sample DG-8

3. In their papers NJDEP refers to sample location DG-8 at a depth taken between 20-24 feet. This sample was taken from under my topsoil pile, which NJDEP refers to as a fill pile. To be clear, I have never taken in any dirt and placed it into the topsoil pile.

4. When I bought the farm in 1998, the property was full of mounds of debris and other material. The farm was previously owned by Andy Nemeth and he had been accepting ground up material from an individual by the name of Joseph Pescatore, who went to prison for illegal dumping on the property. Prior to that the property was used for farming.

5. When I purchased the property there were multiple mounds of material on the property, with at least some forty (40) feet in height. I spent approximately \$100,000 in disposal fees for removal of the material and mounds from the property.

6. Some of these mounds were in the area of where NJDEP took the sample referred to as DG-8, which is now under the topsoil mound.

7. At the time of the dumping and prosecution of Joseph Pescatore NJDEP was aware of this dumping. I am fully aware of this because William Everett, who has since retired from the NJDEP, discussed this with me when he was still with NJDEP and conducting inspections of my property.

8. In their papers NJDEP implies I put dirt in this area that I received from "shady operators" from North Jersey. Not one load of dirt from these operators has ever gone into that location or any other location at the property while owned by me. Simply put, I have only accepted soil from reputable parties, and certainly never "shady operators." NJDEP is fully aware of the companies that send me soil.

9. When I initially started the topsoil mound it was from topsoil I had taken from lot clearings in the Ocean County area for which I had the job of clearing the lots. The lots consisted of virgin land with trees. I would remove the trees and when allowed would strip the topsoil and truck it to my farm. I did not receive any money for the topsoil.

10. When I brought the topsoil back to the property I would place it in a pile, which is now the topsoil mound, which is the location of DG-8. Since the topsoil was very sandy, it was a good source to blend with compost material from the farm, which includes manure and spent bedding. I would then run the blended material through a screener to remove oversize material that was not suitable for use as topsoil. This has been my practice for twenty years.

11. While NJDEP claims I am the source of PCB and pesticide contamination, at what I am being told are very low levels in the area of the property at the depth of 20-24 feet, since I never placed any dirt in this area and only used topsoil from virgin land the only source for the contamination in this area, if it truly exists, can be from the prior illegal dumping by Joseph Pescatore.

Drainage Pipe Sample

12. At Paragraph 22 of Thomas Farrell's First Supplemental Certification, Mr. Farrell states the concrete drainage pipe drains from the center of my property into the stream on the property's southern border and this is where NJDEP obtained sample PS-2. This allegation is repeated in NJDEP's brief at page 5. To be blunt this claim is an outright lie intended to influence the Court.

13. The pipe NJDEP is talking about has been present since before I bought the farm. It actually empties into a farm ditch that has also been present since before I bought the farm. I do not know where the pipe originates from, but the outfall of the pipe is actually approximately

100 yards away from the stream at the property boundary. I actually went out and measured the distance from the outfall of the pipe to the stream to verify my facts. Further, the pipe empties into a ditch, which then goes into a floodplain area that is heavily vegetated, and then any remaining runoff eventually leads to the stream.

14. In their papers NJDEP also refers to a ditch from which they took the sample referred to PS-3. This ditch is only present because of the demands of NJDEP through this Order to Show Cause.

15. As part of the Orders on Consent NJDEP demanded the catch basins be sealed. Prior to the sealing of the catch basins the drainage ditch did not exist. The only reason I dug the drainage ditch was for temporary stormwater drainage, because without the catch basins, stormwater was flooding my farm and barns. I needed the drainage ditch to alleviate the flooding.

16. But for NJDEP's demands the catch basins be sealed, the drainage ditch would not have existed and there would have been no discharge of stormwater runoff. Basically, it is damned if you do and damned if you don't.

17. As a result of the last Order on Consent and Your Honor's directive the NJDEP test the catch basins, the catch basins have been put back into service.

18. In their papers NJDEP claims I need a permit from NJDEP to discharge stormwater containing manure to the stream. This is incorrect and my management of manure is a component of my Animal Waste Management Plan that was prepared in conjunction with the NJDOA On-Farm Strategies to Protect Water Quality, a true and correct copy of which is attached hereto as Exhibit A.

19. In preparing my Animal Waste Management Plan I originally consulted with Dr. Michael Westendorf in 2013. Subsequently, my second Animal Waste Management Plan was prepared in 2016 with the assistance of Jason Berkowitz, who at the time was employed with the Southern division of the Rutgers Cooperative Extension. Mr. Berkowitz is now employed by NJDOA. Attached hereto as Exhibit B are true and correct copies of my 2013, 2016, 2019 Animal Waste Management Plans. At the top of the first page of each Plan is the caption Rutgers University Environmental Planner.

20. The 2016 Animal Waste Management Plan was reviewed by Sandra Holland of the NJDOA in 2018. The following is what Ms. Holland said about my Animal Waste Management Plan in an e-mail to me dated June 29, 2018, a true and correct copy of which is attached hereto as Exhibit C:

Mr. Russo,

Thank you for your letter. Your organized and complete records made it easy to update your AWMP. The narrative descriptions you were able to provide describing each livestock area on your farm, and the Best Management Practices you are implementing at each location is a valuable document to include in your AWMP. As discussed, since your operation is continually changing, please keep the narrative descriptions up to date as part of your AWMP.

21. Through this Order to Show Cause and NJDEP's recent submission NJDEP is asking the Court to penalize me for conducting my farm operations in accordance with the NJDOA Farm Strategies to Protect Water Quality and Animal Waste Management Plans I prepared with the assistance of Dr. Westendorf and Jeff Berkowitz and approved by the NJDOA.

I hereby certify the above facts are true to the best of my knowledge and ability. I am aware that if any of the above facts are willfully false I am subject to punishment.

/s/ Sam Russo
Sam Russo

Dated: October 24, 2019

RULE 1:4-4(C) CERTIFICATION

I hereby certify that the affiant acknowledged the genuineness of the above signature and the original documents will be filed if requested by the Court or any party to his action.

/s/ Craig S. Provorny
Craig S. Provorny

Dated: October 24, 2019